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Paper No. 14

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**FEB 08 2005**

DIRECTOR OFFICE  
TECHNOLOGY CENTER 2100

In re Application of: Dempsey, et al.	)	
Application No. 09/773,116	)	<b>DECISION ON PETITION TO</b>
Attorney Docket No. CEO-011.01	)	<b>WITHDRAW HOLDING OF</b>
Filed: January 31, 2001	)	<b>ABANDONMENT UNDER 37 CFR</b>
For: RETRAINING TRAINABLE DATA	)	<b>\$1.181</b>
CLASSIFIERS	)	

This is a decision on the petition, filed September 28, 2004, requesting the Withdrawal of the Holding of Abandonment of the above-identified application, which has been treated as a petition under 37 CFR §1.181.

The application was abandoned for failure to file a timely response to the Office action mailed on December 4, 2003. Notice of Abandonment was mailed September 24, 2004.

37 C.F.R. § 1.8(b) states:

(b) In the event that correspondence is considered timely filed by being mailed or transmitted in accordance with paragraph (a) of this section, but not received in the Patent and Trademark Office, and the application is held to be abandoned or the proceeding is dismissed, terminated, or decided with prejudice, the correspondence will be considered timely if the party who forwarded such correspondence:

(1) Informs the Office of the previous mailing or transmission of the correspondence promptly after becoming aware that the Office has no evidence of receipt of the correspondence;

(2) Supplies an additional copy of the previously mailed or transmitted correspondence and certificate; and

(3) Includes a statement which attests on a personal knowledge basis or to the satisfaction of the Director to the previous timely mailing or transmission.

If the correspondence was sent by facsimile transmission, a copy of the sending unit's report confirming transmission may be used to support this statement.

In support of the petition, Petitioner provides a facsimile cover sheet showing the following were submitted in the facsimile transmission:

- 1) a 12 page amendment response
- 2) a 1 page Letter to the Official Draftsperson along with 3 pages of formal drawings
- 3) a 1 page Petition for Extension of Time for 2 months and
- 4) a 2 page IDS, 1 page PTO-1449, including references AE (8 pages), AF (24 pages), AG (39 pages), and AH (4 pages).

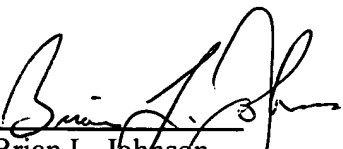
Of the documents listed on the cover sheet, Petitioner has only submitted the amendment and response (12 pages); a Petition for Extension of Time (1 page); and a Letter to the Official Draftsperson (1 Page) along with drawings (3 pages). Petitioner has failed to resubmit the Information Disclosure Statement along with the references sent in the facsimile transmission on May 4, 2004. On January 19, 2005, Petitioner was informed of the need to resubmit the missing items in order for the Information Disclosure Statement and the references to be considered timely filed and to ensure timely consideration of the material by the examiner. Petitioner had previously provided a supplemental petition to include the Information Disclosure Statement and references on January 18, 2005.

Further in support of the petition, Petitioner has provided a copy of the "transmittal document" bearing a certificate of transmission by facsimile signed by Kevin A. Oliver dated May 4, 2004, and a copy of an auto-reply response to the facsimile transmission from the United States Patent and Trademark Office acknowledging that 94 pages were received on May 4, 2004. The auto-reply obviates the need for the personal knowledge statement of transmission as it provides the proof of actual receipt.

Petitioner has established that a response to the office action was filed on May 4, 2004 with the requisite fees for a 2-month extension of time necessary for the response to be considered timely.

Accordingly, the petition is **GRANTED**. The Notice of Abandonment is **VACATED**.

The application file is being forwarded to the technical support staff to withdraw the holding of abandonment and for charging \$420.00 to Deposit Account Number 06-1448 for the two-month extension of time. Subsequently, the application file will be forwarded to the examiner for consideration of the response.

  
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